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OFFICE OF PETITIONS

In re Application of :
Brian Cottrell :
Application No. 10/529,178 : DECISION ON PETITION
Filed: 24 March, 2005 :
Attorney Docket No. 3009-1015 :

This is a decision on the "PETITION UNDER 37 CFR §1.181 TO
WITHDRAW THE HOLDING OF ABANDONMENT," filed 9 January, 2007.

The petition is **GRANTED**.

On 28 June, 2006, the Office mailed a non-final Office action, which set a three-month shortened statutory period for reply. In the apparent absence of a timely filed response, the application was held abandoned on 29 September, 2006. Notice of Abandonment was mailed on 18 January, 2007.

In the petition, applicant asserted that the practitioner did not receive the non-final Office action. Specifically, the practitioner asserts that the Office action was returned to the USPTO as undeliverable.

In the absence of any irregularity in the mailing of the non-final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the

practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the Office action was properly mailed to the petitioner at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioner has submitted a statement by registered practitioner Benoit Castel attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of petitioner's file jacket and docket record is supplied with the petition.

A review of the record indicates that the USPTO mailed the nonfinal Office action to the correct correspondence address; however, it was inexplicably returned to the USPTO on 10 July, 2006.¹ For this reason, the practitioner did not receive the nonfinal Office action of 28 June, 2006.

The petitioner has made a sufficient showing of nonreceipt of the Office action. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

As such, the holding of abandonment is **withdrawn**. The application is restored to pending status.

The petition is **GRANTED**.

The application file is being referred to Technology Center 2800 technical support staff for remailing of the non-final Office

¹ The returned Office action was incorrectly coded as "Final Rejection Mailed" in the Office's Image File Wrapper (IFW) system. The coding error has now been corrected in Office records.

action mailed on 28 July, 2006. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3231. Any other questions regarding the status of the application or the examination process should be directed to the Technology Center.

A handwritten signature in black ink, appearing to read "D Wood", is positioned above the typed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions